A

LETTER,

FROM

A Member of the

PARLIAMENT

OF

Scotland,

TO HIS

ELECTORS,

THE

Gentlemen, of the Shire of ——

Containing his REASONS, for withdrawing from that ASSEMBLY, and entering his Remonstrance against what the remaining Members shall Do or Act, as a Free Parliament.

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A LETTER FROM A MEMBER of the PARLIAMENT OF SCOTLAND,

To his Electors, the Gentlemen, of the Shire of ——

Containing his Reasons, for withdrawing from that Assembly, and entering his Remonstrance against what the remaining Members shall Do or Act, as a free Parliament.

Gentlemen,

HAving had the Honour to be your Representative in Parliament these several Years past, I always thought it my Duty, from time to time, to Acquaint you with our Proceedings, that you might be fully Satisfied of my endeavour-

ing to Anſwer the Truſt you have been pleaſed to Repoſe in me, by advancing on all Occaſions, the general Good of my Country, and aſſerting the Rights and Liberties of the Subject againſt all Innovations. At preſent I think my ſelf more ſtrictly bound, to Inform you of what has paſt at our preſent Meeting at *Edinburgh*, becauſe of a ſingular Occurrence that has fallen out among us, the like of which has not happened ſince the Foundation of our Monarchy. We are divided among our ſelves as to the Legality of our Meeting, and about Fourſcore Members have openly declared their Opinion, that they do not think themſelves Warranted by Law, to Sit and Act as a Parliament. They have entered their Diſſent from every thing that ſhall be done or acted by that Authority, have taken Inſtrument upon it, by way of Proteſtation, and are withdrawn in a Body together. This being a matter of the higheſt Conſequence, which nearly concerns the whole Body of the Nation, and more eſpecially thoſe Perſons, who have the Right of Chuſing the Members of Parliament, I could not be ſo far wanting in my Duty, as not to ſend you a particular account of my behaviour on this occaſion, and of the Grounds and Reaſons on which I go.

You know, Gentlemen, that by the Fundamental Laws and Conſtitution of our Government, whenever the King Dies, the Parliament, and all other Courts of the Nation, are immediately Diſſolv'd by his Death. But in the Eighth Year of the Reign of his Late Majeſty K. *William*, there was ſome Alteration made in this part of our Conſtitution, by an Act of Parliament, which Impowers the Parliament laſt in Being at his Majeſty's Death, to Meet and Act in ſuch things as ſhould be needful, for the Support of the Government, or the Safety of the Kingdom. And that you may be the better able to Judge of the Meaning and Intention of the Act, I have herewith ſent you a Copy of it.

ACT

ACT for the Security of the Kingdom.

October 9. 1696.

THE Estates of Parliament considering, That when it shall please God to afflict these Nations, by the Death of our Sovereign Lord the King, (whom God of his infinite Mercy long preserve) or by the Death of any of his Heirs or Successors, this Kingdom may be subjected to many Calamities, by the Treacherous Plots of unnatural Conntry-Men, and Persons Popishly affected at Home, or by the Invasion of Strangers, before new Commissions Civil or Military can be granted, or a Parliament can be summoned, or called by the next Heir or Successor to the Crown. For preventing thereof, His Majesty with Advice and Consent of the said Estates, Statutes and ordains, *that no Commission Civil or Military, or any Court whatsoever, shall cease or become void by the Death of his present Majesty, or any of His Heirs or Successors, but that the same shall continue in full Force and Effect, for the space of Six Months after the said Death, unless in the mean time the same be stopp'd or recall'd by the next immediate Successor,*

to

to whom the Imperial C R O W N *of this King shall descend, according to the Declaration of the Estates of this Kingdom, dated the Eleventh Day of* April, *One Thousand Six Hundred Eighty Nine, containing the* Claim of Right, *and Settling the Succession to the Crown: But prejudice always to such Judges who have Right to their Offices heretably,* or ad vitam *aut culpam, to Enjoy and Exerce the same as before the making thereof.* And farder, *His Majesty with Advice and Consent aforesaid,* Statutes, Enacts *and* Declares, *That this present Parliament, or any other Parliament that shall be hereafter Summoned, and Called by, His Majesty, His Heirs or Successors, shall not be dissolved by the Death of His Majesty, His Heirs or Successors, but the said Parliament if assembled for the time, shall, and is hereby Ordained to continue, and is by vertue of this present Act Impowered and Required to Conveen, Sit and Act; notwithstanding of the said Death, and that during the time of Six Months, and no longer, unless the same be sooner Adjourned or Dissolved by the said Person who shall be next Heir to the CROWN, according to the aforesaid Declaration of the Estates. And if the said Parliament shall be under Adjournment. the time of the said Death, then it shall Meet and Sit at and upon the Day to which it is Adjourned,* the

if the same shall fall within twenty Days after the Death foresaid; or, if the Day to which it may be Adjourned, shall fall to be after the said Twenty Days, then it shall Meet and Sit immediately after the elapsing of the said Twenty Days, notwithstanding of the foresaid longer Adjournment, and so continue during the said time of six Months, unless sooner Adjourned or Dissolved by the foresaid next Heir, succeeding as said is.

And it is further *farder* Statute *and* Ordained, *That in case there shall be no Parliament in being at the time of the Death of his Majesty, or any of his Heirs or Successors, then the last preceding Parliament shall after twenty Days after the said Death immediately conveen and sit at* Edinburgh; *and is hereby impowered and required to act as said is, as if the Parliament had not been dissolved, and that during the foresaid time of six Months and no longer, unless the same shall be sooner adjourned or dissolved by the next Heir of the Crown, succeeding as said is.* Providing, *Likeas it is hereby expresly provided, That the said Parliaments Conveening and Meeting by the Force of this Act, in the Event of the Death foresaid, shall only have* Power *to Do and Act what shall be needful for the Defence of the true* Protestant *Religion,*

gion, as now by Law eſtabliſhed, the maintaining of the Succeſſion of the CROWN, as ſettled by the ſaid Claim of Right, *and for the preſerving and ſecuring of the Peace and Safety of the Kingdom, but no ways to alter or innovat the preſent Conſtitution of the Government, or any part thereof, or Laws ſtanding for the time, or to do any thing prejudicial or contrary thereto. Likeas his Majeſty with Advice and Conſent foreſaid, does hereby Reſcind, Caſs, and make void all Laws, Statutes, Cuſtoms and Conſtitutions, in ſo far as the ſame are contair to, or inconſiſtent with this preſent Act, and no farder.* Declaring *always, That nothing contained in this Act ſhall extend, or be underſtood to extend to, alter, or any ways reſtrict the Prerogative of the King, his Heirs or Succeſſors, or his and their Power to call, adjourn or diſſolve Parliaments.*

It is about the meaning of this Act, that we are now divided among our Selves. Some are of Opinion, that, the end and deſign of the Act being fully ſatisfied, and the Parliament not meeting on the day prefixed in the Act, the Parliament is now Diſſolved, and the Members not warranted by Law, to ſit and act any Longer as a Parliament. Others are of a different Opinion, and think themſelves warranted by the words and meaning of the Act, to ſit and act with a full Parliamentary Power. However, we all met on the 9th of *June*

of *June* laſt, the day appointed for our Meeting, by her Majeſties Proclamation; and immediately after Prayers were ſaid, his Grace the Duke of *Hamilton* ſtood up, and deſiring leave to be heard, ſpoke ſome few words, in his own Name, and in the Name of the other Members who adhered to him, which were to this effect. *That they were come there in obedience to her Majeſties Commands; and that they were all heartily glad at her Majeſties happy acceſſion to the Throne of that Kingdom, not merely on the account that it was her undoubted Right, as being lineally deſcended from the the Ancient Race of their Kings, but likewiſe becauſe of the many perſonal Vertues and Royal Qualities Her Majeſty is endowed with, which gives them ground to hope, that they ſhall enjoy, under her auſpicious Reign, all the Bleſſings that can attend a Nation, which has a loving and gracious Sovereign, united with a dutiful and obedient People. That they were reſolved to ſacrifice their Lives and Fortunes in defence of her Majeſties Right, againſt all her Enemies whatever; and that they had all the deference and reſpect for Her Majeſties Government and Authority, that was due from Loyal Subjects to their Rightful and Lawful Sovereign. But that at the ſame time they acknowledged their Submiſſion to her Majeſties Authority, they thought themſelves bound in duty, by vertue of the Obedience they owe to the ſtanding Laws of the Nation, and becauſe of the regard they ought to have for the Rights and Liberties of their Fellow Subjects, to declare their opinion as to the Legality of this Meeting; that they did not think themſelves warranted by Law, to ſit and act any longer as a Parliament; and that by ſo doing they ſhould incurr the hazard of their Lives and Fortunes, if ever their Proceedings ſhould come to be queſtioned by a ſubſequent Parliament.* The Duke then read a Paper, which contained the

Reasons of their dissenting from the proceedings of the other Members, who thought themselves impowered to sit and act as a Parliament, and then his Grace withdrew, and was followed by Seventy nine Members, who adhered to him in the Dissent.

The words of the Paper, which the Duke of *Hamilton* read in the House before he withdrew, are these.

FOrasmuch as by the Fundamental Laws, and Constitution of this Kingdom, all Parliaments, do dissolve by the Death of the King or Queen, except in so far as innovated by the 17th. Act 6th, Session of King William's *Parliament, Impowering the Parliament last in being at his Majesties Death, to meet and Act, what should be needful for the defence of the true Protestant Religion, as now by Law Established, and maintaining the Succession to the Crown, as settled by the Claim of Right, and for preserving and securing the Peace and Safety of the Kingdom. And now seeing that the said ends are fully satisfied by Her Majesties Succession to the Throne, whereby the Religion and Peace of the Kingdom is Secured. We conceive our selves not now warranted by this Law to Meet, Sit, or Act: Therefore do dissent from any thing that shall be done, or Acted, and thereupon take Instrument.*

Among

Among the number of those who adhered to this Paper, I was one; and the Motives which induced me to concur with those Noble Lords, and other Worthy Patriots, in their Remonstrance against the Continuance of this Parliament, were these. 1st, The long Continuance of any Parliament is an Encroachment on our Constitution, and of dangerous consequence to the Liberty of the Subject. 2ly, This Parliament having been called in a time, when the Nation was in great confusion and disorder, the Continuance of it during all the last Reign, was complained of as a great hardship on the Subjects, and therefore it ought now to be dissolved. 3ly, The present Meeting of this Parliament seems contrary to the intention and meaning of the Act, by which it is continued after the King's death. 4ly, Altho it were beyond dispute, that this Parliament might Meet, and Sit, and Act in such things as are expresly mentioned in the Act, yet is it so Limited and restrained in its Powers, that it cannot dispatch those weighty affairs which are laid before it at this time by Her Majesty, and therefore a new Parliament seems to me to be absolutely necessary.

As to the first, the Long Continuance of any Parliament is certainly an Encroachment on the Constitution, and of dangerous consequence to the Liberty of the Subject. The design of Parliaments is, that the Body of the People, being truly and fairly represented in the great Council of the Nation, may there consult and advise with the King, concerning the great affairs of the Kingdom. There it is that the Subjects are to consider, of the proper ways and means of redressing all the Grievances of the Nation, whether in their affairs of Government at home, or in their concerns with Foreign States and Dominions abroad. It is from this Assembly, that the King is to learn and know the

Inclinations of his People in all matters of publick Concern. But how is it possible, that the Inclinations of a People can be known, when they are not Left at Liberty to chuse the Persons who are to represent them? How can any County or City expect to have their Grievances fairly represented in Parliament, when perhaps the Person who represents them in that Assembly, is the greatest Grievance they have to complain of? If a Kingdom is forced to continue the same Representatives in Parliament, for the space of thirteen years successively, this intirely destroys the intent and design of Parliaments, and deprives the People of the chief Branch of their Liberty, which is, the freedom to chuse what Persons they please to Represent them in the great Council of the Nation. For this reason, the long Continuance of Parliaments has always been Looked upon as dangerous to our Constitution, and an Encroachment on the Liberty of the Subject. And to prevent any bad consequence from this practice, our Neighbour Nation of *England* did not think their Liberties secure, till they obtained the *Triennial Bill*, by which the King is obliged once in three years to call a new Parliament, that the People may have an opportunity of changing their Representatives, in case they Act contrary to their Trust. Neither have we in *Scotland* been altogether free of jealousie on this head; for at the time of K. *William*'s accession to the Throne, we declared in our Claim of Right, *that it is the undoubted Right and Priviledge of the Subject to have frequent Parliaments.* And we need not doubt but her present Majesty will readily grant us all such Acts, as shall be judged necessary for the further security of the Rights and Liberties of the Subject, not only in this point, but in all others.

But

But if the long Continuance of any Parliament be lookt upon as an Encroachment on the Conſtitution, we cannot Blame the People of *Scotland*, for having Complain'd of the Continuance of this, for above theſe Thirteen Years paſt, as a great Grievance and Hardſhip on them. And this was the Second Conſideration which mov'd me to Joyn with thoſe Worthy Aſſerters of the Liberties of our Country, in Remonſtrating againſt the farther Continuance of this Parliament, and Addreſſing her Majeſty, that a New Parliament may be Speedily Call'd, for the Satisfaction of the whole Nation. It is not unknown to any of us, Gentlemen, what Confuſion and Diſorder the Nation was in, when this Parliament was firſt Aſſembled in the Year 1689. K. *James* was then in *Ireland*, at the Head of a Conſiderable Army, and in the intire Poſſeſſion of that Kingdom; there was likewiſe a Party appear'd for him here in *Scotland* at that time. This gave us a diſmal Proſpect of an Inteſtine War, the Event of which being then uncertain, many Gentlemen of Eſtates were unwilling to hazard their Fortunes, by Joyning with either Party, and therefore cautiouſly avoided being Choſen Members of the Convention themſelves, or having any concern in the Elections of others. By their declining the Elections, many Perſons of no Quality, and of as Little Eſtate, procured themſelves to be returned Members of that Convention. In ſome places there was not a ſufficient Number of Electors, as the Law Requires; and in others, they return'd Perſons to ſit in Parliament, who were under Sentence of Forfeiture and Out-lawry, Incapable by the Laws of the Kingdom, to ſit in any Court, before the Sentence was Legally Revers'd. This Convention of Eſtates was afterwards Converted into a Parliament, which Step at that time was Thought Irregular, and by ſome Condemn'd as Illegal. Nay, ſeveral

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Members of the Convention left the Assembly upon that account, Alledging, That the Powers and Instructions they had from their Constituents, allowed them only to Act as a Convention of Estates; and that they had no Authority to Act in a Parliamentary Capacity, till their Powers and Instructions were Renew'd, and Enlarg'd by the Counties and Cities which they Represented. But they Pass'd an Act, Asserting the Legality of the Parliament, and making it High Treason for any to Call its Authority in Question.

Now, consider that many People were dissatisfied with these Irregularities, which happened in the first Constitution of this Parliament, and which nothing but the urgent Necessities of the Times could well Justify, and that in *England* it was thought proper, that the Acts, which were made by their Convention of Estates, after it was turn'd into a Parliament, should be Ratify'd and Approv'd by the next Subsequent Parliament, which was Call'd in the usual manner, and according to the ordinary Forms of Summoning Parliaments; I say, considering the Dissatisfaction of many among our selves with those Steps that were then made, and the Practice of our Neighbours in *England* in the like matters, it seem'd but reasonable for the People of *Scotland* to expect, that as soon as matters were Peaceably Settled in the Nation, a New Parliament should be Call'd, according to the usual Form of Summoning Parliaments, where the Subjects might have an Opportunity of Chusing New Representatives, with a full Parliamentary Power. When the People Chuse their Deputies to a Convention of Estates, they Impower them by that Election, only to do what shall be judg'd proper for the present Defence and Security of the Nation, and to raise such Taxes as shall be found necessary for that end, till a Parliament can be legally assem-

assembled: And this is the reason, why a Convention of Estates cannot make or repeal Laws, or do any other Acts which a Parliament may; because the People, by Electing them in that Capacity, restrain their Powers of Acting within certain Bounds and Limits, which they are not to exceed. But when Writs are Issued out for calling a Parliament, the People by Electing their Representatives under that Capacity, impower them not only to do what is necessary for the present Peace and Security of the Nation, and to give Taxes for that End, but likewise to make Laws, repeal Laws, to redress Grievances, and in a word, to do every thing which belongs to the Supreme Legislative Authority.

It was this that gave Occasion to some Persons of the Kingdom, to be Dissatisfied with our Proceedings at that time, that we whom you had Chosen to be your Representatives in a Convention of Estates, whom you had Impowered by that Election only, to Settle the Peace of the Nation at that time, should have taken upon us to Act in a Parliamentary Capacity without your Consent, to Make, and to Repeal Laws, without having the necessary Power and Instructions from our Electors so to do, which we never have had to this day. It was the pressing Circumstances of the Times then that Oblig'd us to make this Step, and, I hope, that Consideration has Dispos'd the Nation to Excuse it. However, I must needs own, that I was still of Opinion, that the Nation ought to have had a New Parliament, as soon as all things were Settled in Peace and Quiet. But during the last Reign, this could never be Obtain'd, for what Reasons, is best known to those who had the Direction of our Affairs. And therefore I thought my self bound on this Occasion, by the Trust you have Reposed in me, to Remonstrate against the longer Continuance of this Parliament, and to Petition the Queen's Majesty, that a

New

New One may be Speedily Call'd, for the Removal of all Doubts and Difficulties, and for the Satisfaction of the whole Nation.

Upon the Death of his Late Majesty, this Parliament had been Dissolv'd of Course, had it not been for the Act of Parliament made in the 8th Year of the Reign of K. *William*, by which the Parliament Last in Being at his Majesty's Death, is Impower'd to Meet and to Act in such Matters, as shall be absolutely Necessary, for the Support of the Government, and Safety of the Kingdom. But in my Judgment, it seems contrary to the Design and Meaning of the Act, that this Parliament should now Meet at all. And this is the Third Reason which Prevail'd with me, to Withdraw from the Assembly, and to Dissent from their Proceedings.

As I have already said, by our Constitution Parliaments were always before this time dissolved by the death of our Kings; so that the Authority of this Parliament after the King's death, is intirely to be derived from the above recited Act, and the Members thereof can now pretend to no more Authority than what it gives them. We all know, that the design and intention of this Act, was to prevent any intestine broils and divisions, that might hereafter happen upon the death of any of our Kings. There had been, some time before the making of this Act, a Conspiracy discovered in *England*, to take away the Life of the Late K. *William*, and by that means to restore the Late K. *James* to the Throne. The Parliament being apprehensive, Least those Conspirators might some time or other accomplish their design against the Life of K. *William*, and take an occasion from the confusion and disorder, that might arise in the Nation upon such an Accident, to oppose the Succession of the next Heir to the Crown, according to the present

ſent Settlement. To prevent therefore any ſuch confuſion, and to diſappoint the hopes of all ſuch Conſpirators for the future, it was thought convenient, that an Act of Parliament ſhould be made, impowering the Parliament in being, at or immediately before the time of the deceaſe of the late K *William*, or any of his Succeſſors, to aſſemble aſſoon as poſſibly they could, in order to ſecure the peace and quiet of the Nation, and to ſettle the next Heir to the Crown in the peaceable poſſeſſion of the Throne. This is the only end and deſign of that Act of Parliament, which being fully ſatisfied by her preſent Majeſties peaceable Acceſſion to the Throne, with the univerſal joy and acclamations of all her People, it is no ways neceſſary that this Parliament ſhould be of any Longer Continuance. Nay, it is far from being neceſſary, that it ſeems ſo directly contrary to the meaning and intention of the Legiſlators, when they paſt this Act into a Law. For could they have been aſſured at that time, that there would have been no inteſtine Commotions upon the Death of his Late Majeſty, and that our preſent moſt Gracious Queen ſhould have mounted the Throne without any Oppoſition, they would never have dreamed of altering our Conſtitution in this point, but have left this Parliament to the common fate of others, that is, to be Diſſolved by the Death of the King.

It was only to prevent diſorders, that might happen in ſuch a Critical Juncture, and to ſecure the *R*ight of the next Heir, that the Parliament made this Innovation upon the Conſtitution; and the Act, by which the Parliament does ſubſiſt after the King's death, Impowers them only to do ſuch things as ſhall be abſolutely neceſſary, for the preſent Peace and quiet of the Nation, in ſuch a Critical Time. Had it been the Intention of the Legiſlators, that this Parliament ſhould

be continued after the Succeſſor was peaceably ſettled in the Throne, they would have granted it all thoſe Powers which are neceſſary for it to act as a Parliament; allowed it to make Laws, repeal Laws, redreſs the Grievances of the Subjects, and to do whatever elſe ſhould be thought neceſſary for the good of the Nation; Which, as appears by the Reſtrictions and Limitations in the Act, the Legiſlators have not thought fit to do. Since therefore the ſole Intention of the Legiſlators, in making this Innovation on our Conſtitution, was to prevent any diſorders that might happen on the Death of any of our Kings; that, in caſe of any ſuch urgent neceſſity, the Parliament might meet, in order to preſerve the Peace and Quiet of the Nation. Why then ſhould we extend the meaning of this Act further than the Authors of it ever intended? To make this Parliament continue to Sit and Act, after that the Succeſſor is peaceably ſettled in the Throne, is what the firſt Authors of the Act never dreamed of.

All Acts of this kind, which are Innovations of the Fundamental Laws and Conſtitution of a Country, are moſt odious in the Eye of the Law, and therefore moſt rigorouſly to be interpreted, and never to be extended beyond the plain meaning and intention of the Lawgivers. But the preſent Act, as applied to the further Continuance of this Parliament, is ſtill more unfavourable in the Eye of the Law, than it would have been in any other Caſe. For here it may be lookt upon as a double Breach of our Conſtitution. Firſt, it continues a Parliament, whoſe long Continuance already, for above theſe Thirteeen years paſt, has been a grievance to the Nation, and directly contrary to the Fundamental Laws of the Kingdom, which require frequent Parliaments. Secondly, according to our Conſtitution, all Parliaments

ments are diſſolved by the Death of the King, except in ſo far as it is innovated by the Late Act in the Reign of King *William*, which impowers the Parliament in Being, to meet after the King's Death, and to Sit and Act for the preſent Safety and Defence of the Nation, in caſe of any Commotions or Diſturbances at that time, and in no other caſe. So that to extend the meaning of this Act, to the Impowering of the Parliament to Sit and Act in any other Caſe, than what is expreſly mention d in the Act, is to make a greater Breach and Innovation of our Conſtitution, than the Authors of this Act ever intended.

To me the meeting of this Parliament ſeems not only contrary to the end and deſign of the foreſaid Act of Parliament, but likewiſe to be expreſly againſt the Letter of it. For the words of the Act do require, that the Parliament ſhould meet within Twenty days after the King's Death; if they had met at that time; they were impowered to Sit and Act for the ſpace of Six Months from the Deceaſe of the King, unleſs the Succeſſor ſhould think fit to Adjourn or Diſſolve them. But the Parliament not having met at the time preſcribed by the Act, it ſeems to me to be diſſolved; for the Words, requiring its meeting within the Twenty days, ſeem to be poſitive and abſolute, without any Condition; and the conditional Words, *unleſs the Succeſſor ſhall think fit to Adjourn or Diſſolve them*, appear to me, to have relation only to their Sitting and Acting for the ſpace of Six Months. So that the Members of this Parliament not having met within the Twenty days, as the expreſs words of the Act require, and the conditions, on which they are allowed to Sit and Act, not having exiſted, the further Continuance of this Parliament, ſeems, in my judgment, to be directly op-

posite both to the Letter and meaning of the Law. And altho we should allow the words of the Act to be capable of bearing another construction, that the Parliament may still meet within the Six Months, altho it did not meet on the day appointed in the Act; yet as matters stand now, there being such a considerable Body of the Members of Parliament, of Opinion, that they cannot legally meet, and act as a Parliament, and they having entered their Dissent, and withdrawn themselves from the rest of the Members on that account, I cannot see how the remaining Members can warrantably proceed to Act with a Parliamentary Power, before this Difference among our selves is adjusted, and the meaning of the Act explained. For my part, were I never so fully convinced, in my private opinion, that the Parliament is warranted by this Act, to continue to Sit and Act, yet seeing such a great Body of our selves, and the Country in general of a different Opinion, and remonstrating against the Legality of our Proceedings, I should not venture to sit there, till the Act from which we derive our Authority, were legally explained.

Now, the great Question is, how this Act of Parliament at present shall be explained? It seems but reasonable to think, that this Parliament cannot pretend now to be Interpreters of the meaning of the Act, although they were the first Authors of it. This were to take upon them to be Judges in their own Cause; for here they claim, by vertue of this Act, Powers and Priviledges, which the People say do not belong to them, and which the Legislative Power had no thoughts, as they say, of granting to them, when this Act was made a Law. The Case here is between the Collective Body of the People, and their Representatives; the People say, we have no Power any longer to represent them

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in Parliament, that our Commiſſion is now expired. If we who are the Repreſentatives ſhall tell them, that we have ſtill power to repreſent them in Parliament, and that we will continue our Power of Repreſenting them as long as we pleaſe, the People will be apt to complain of this proceeding as a hardſhip, and an encroachment on their Liberty. When any Controverſie ariſes between the People and their Repreſentatives, concerning the Power and Authority of the one, and the Rights and Liberties of the other, the ſafeſt way is, to commit the deciſion of this matter to a new Parliament. For if we allow the Parliament in being, to be always the proper Judges of the extent and duration of their own Authority, we put it in the power of every ſet of Men, that happen to be our Repreſentatives in any Parliament, to perpetuate that Authority to themſelves and their Heirs for ever, and to deprive the Subjects of the power of ever chuſing new Repreſentatives. It is upon this Conſideration, Gentlemen, that I have choſe at this time, to join in an Addreſs to her Majeſty, to grant us a new Parliament, rather than to give you the leaſt ground to ſuſpect, that I have any deſign of continuing my ſelf your Repreſentative in Parliament, any Longer than you ſhall think fit to honour me with that Character.

I have conſidered the preſent Caſe to be in ſome reſpects like to that of *Triennial Parliaments*. Suppoſe we had here in *Scotland*, as they have in *England*, an Act for *Triennial Parliaments*, and that upon account of ſome ambiguity in the wording of the Act, the Parliament in being ſhould take upon them to explain this Act to their own advantage; and inſtead of Three years continue themſelves Thirteen. The People, in this Caſe, would think themſelves very much aggrieved,

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and would certainly desire that a new Parliament might be called, to explain the meaning of that Act. They would be apt to protest against the Interpretation of the Parliament then in being, if they should extend their own Powers contrary to Law, and in prejudice to the Liberty of the Subject. In that case, the Dispute would be, not between the Subjects, and the Supreme Legislative Authority; but between the Collective Body of the People, and a Set of Men, who take upon themselves to be the Peoples Representatives in Parliament, whereas they were divested of that Power, immediately upon the expiring of the term of Three years. I am very far from thinking our present Case to be exactly the same with this. God forbid! My duty to my Neighbour, obliges me to judge more favourably of their Actions. I only mentioned this paralel Case, because I think the same remedy that would be proper to satisfie the Subjects in that Case, would be the most effectual expedient to heal our Divisions, and unite our Counsels in the present, and that is, the calling of a New Parliament, in which the Immediate sense of the Nation may be known in all matters of publick Concern, and the Act now contraverted may be explained by an Authority, which cannot be suspected by the People of the least partiality, they not being Judges in their own Case. And since we all declare, that we have no sinister ends and designs in our Actions, we have nothing in our view, but the good of the Country; to what purpose should we thus Struggle, contrary to the current of the Inclinations of the People, to perpetuate our own Authority any longer. We ought to have no grudge in laying it down at present; we have continued a Parliament for above Thirteen Years, altho we our selves, in our first Session, declared in our Claim of Right, *That the long Continuance of Parliaments, is*

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a Breach of the Constitution, and an Encroachment on the Liberty of the Subject. We have no reason to be Dissatisfied with the People, if they cry aloud at this time for a New Parliament. They know, that altho our Authority is continu'd for some time after the King's Death, yet is it so Limited and Restrain'd, and we so Fetter'd by our own Act of Parliament, by which we exist, that it is not in our Power, to give any Ease or Relief to the Nation. Why then ought we not all unanimously to Joyn with our fellow Subjects, in Petitioning the Queen for a New Parliament, which being cloath'd with a full Parliamentary Power, may be able to Ease the Subjects of all their Grievances, and to do whatever shall be necessary for the Good of the Nation.

If the meaning of this Act of Parliament had been called in Question before the Death of his late Majesty, it might have been then urged with a greater appearance of Reason, that the Members of this Parliament were the competent Judges to explain the Act. They were then cloath'd with the Legislative Power in its full extent, without any Restriction or Limitation; they could not then have been so much suspected of partiality, as being Judges in their own Case. For it might have so happened, that this Parliament might have been dissolved, and a new one called, before the decease of the Late King, and so the present Case never to have been their own. But as matters stand at present, it is quite another thing; the Case is now become their own; so that to allow them at this time, to be Interpreters of the meaning of this Act, is to make them Judges in their own Case. They Act now under another Denomination and Character, than they did during the Life of his Late Majesty; they are now Limited and Restricted

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in their Power and Authority, and the Act of Parliament, to which they owe their Being, impowers them only to Act in ſuch matters as are neceſſary for the Security and Peace of the Nation, till a new Parliament can be conveniently Aſſembled.

So that although this abſurdity and inconvenience, of their being Judges in their own Caſe, did not follow, yet do they ſeem, in my opinion, to be incapacitated from interpreting the Powers granted to them, by the forementioned Act, in another reſpect. And that is, becauſe by the Act which continues them after the King's death, they are expreſly diveſted of the Legiſlative Power; they are not impowered to make or repeal Laws, and by conſequence are excluded from the power of Interpreting them. As it is the Legiſlative Authority, that has the Sole power of Making or Repealing Laws, of likewiſe the power of Interpreting them belongs Solely to it. The Lawgivers may Delegate this Branch of their Authority to certain Perſons, and in certain Caſes, where they think fit; as they have done to the Judges, in relation to thoſe Laws which concern the property and particular Intereſts of the Subjects. The Judges are allow'd to be the ordinary Interpreters of ſuch private Laws; and where they Diſagree among themſelves in their Opinions about the meaning of any Law, there they ought to have recourſe to the Original Fountain, the Supreme Legiſlative Authority. As to the power of Interpreting the publick Laws of the Nation, which concern the Sovereign Authority of the King, the Rights and Liberties of the People, or the Powers and Priviledges of a Parliament; this the Supreme Legiſlative Authority has intirely reſerv'd to its ſelf, and has delegated no part of it to any Inferiour Authority. So that I cannot ſee any poſſible way, how the meaning of this Act of Parliament, now in Diſpute, can be Explained

plained, or the present Difference among the Members of Parliament adjusted, till a new Parliament be called by the Queens Authority; which being cloath'd with the Legislative Power in its full extent, may give an Explanation of the Act now controverted, by which any future disputes about its true meaning may be avoided.

But Fourthly, suppose it were beyond all dispute, that this Parliament might still meet, and Sit, and Act in some things; yet is it so limited and restrain'd in its Powers, that it cannot dispatch those weighty affairs which are laid before it at this time; and therefore I was clearly of Opinion, that we ought to Address the Queen, and lay before Her Majesty, the absolute Necessity of calling a new Parliament, before the Nation can be in a capacity of complying with her Majesties Commands. The Queen has been pleased, in her Letter to the Parliament, to recommend to their Consideration, the Treating of an Union with *England* which is a matter of such Consequence, that this Parliament, suppose its Authority in other matters were allowed has no power to medle with it. Neither are the Members of this Parliament at Liberty, to make any New Settlement of the Succession to the Crown; since the Act, by vertue of which they are continued, says expresly, that they shall have no Power to *Repeal any Laws, or to make any Alteration in the Government of Church or State.* And herein appears a great difference between our Act of Parliament, and the Act in *England*, by which their Parliament is continued after the King's Death. The *English* Act puts the Members of their Parliament under no Restrictions or Limitations, gives them the same Powers that other Parliaments have, and allows them to make the same Acts, that any other Parliament may. They are Limited in nothing, but as to the time of their sitting, which is Six Months from the Death of the King. But the Act of Parliament in

Scotland appoints a day to the Members for their Meeting, Limits them in their Powers, and allows them only to Act in ſuch Matters, and in ſuch Caſes, as are there Specify'd in the Act, and in no others.

It is from this Act alone that the Members of this preſent Parliament, if we may call that Aſſembly, which has not all the neceſſary Parliamentary Powers, a Parliament, derives all the Authority they have; and by the expreſs Words of the Act, they are forbid to meddle with matters of that Importance; they areonly Impower'd to do what ſhall be abſolutely neceſſary for the preſent Peace and Safety of the Nation, till a New Parliament can be Aſſembled after the uſual manner. By what Authority then can the Members of this Parliament, take upon them to appoint Commiſſioners, to Treat about the Union with *England*? Which is not only the repealing of our Laws, but the greateſt change and alteration, that ever has happened in our Conſtitution, to be incorporated with another free Independent State. And although the Words of the Act did not ſo expreſly limit them in their Powers; yet to have a matter of this Conſequence, as is the Union of the Two Kingdoms, tranſacted by a Parliament, whoſe Authority is called in queſtion by ſuch a conſiderable Body of the Nation, and even by the Members themſelves, were to build the *Union* upon a very ſandy foundation. Is it to be ſuppos'd, that the Parliament of *England*, will allow their Commiſſioners to treat about this matter, with a Parliament, whoſe Authority is diſputed among our ſelves? Beſides, in a matter of this moment, in which the Intereſts of all the People are ſo highly concerned, it were proper to have the more Immediate ſenſe of the Nation. Her Majeſties propoſing this affair of the *Union*, in her Letter to the Parliament, is a demonſtration to me, that Her Majeſty has not as yet been fully Informed of our Laws and Conſtitution, and particularly of that Law,

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to which we owe our Being after the King's Death, and from which we derive all the Authority we can pretend to. And for that Reason, I thought it absolutely necessary, that some of our Members should be deputed to wait on her Majesty, and lay before her the Act of Parliament, which seems to allow us to meet and Act, only in case of any disturbance or commotions in the Kingdom, upon the Death of the King; and by which we are expresly forbid, to alter or repeal any thing in our Laws and Constitution.

These are, Gentlemen, the Reasons which have prevailed with me, to join with those Worthy Noblemen and Gentlemen, who have remonstrated against the further Continuance of this Parliament. You'l easily believe, that if I had consulted my own private Interest, I had continued to sit and Represent you in that Assembly, without putting it to the hazard of a new Election, whether I should again have the honour of Representing you in a new Parliament or not. It was purely to assert and vindicate your Rights and Liberties, that I joined in this Remonstrance. I was unwilling to sit any longer in that Parliament, whose long Continuance had been so grievously complained of by the Subjects in the Late Reign. I considered that we were the Persons, who in the Settlement of the Crown upon their late Majesties King *William* and Queen *Mary*, had Arraigned our former Kings, of Innovating our Constitution, and encroaching on the Liberty of the Subject, by the long Continuance of Parliaments; that we at that time solemnly declared and asserted in our Claim of Right, *That it is the undoubted Right and Priviledge of the Subject, to have frequent Parliaments.* If after all these solemn Declarations and Protestations, that we our selves have made, in asserting the Liberties of the Subject, and after that we have continued always the same Parliament, for

above these Thirteen years past; if still we should continue to sit and act as a Parliament, when we are divided among our selves, whether we have Authority to act as such or not, and when the general Inclination of the People seems to cry aloud for a new Representative Body; I was afraid least, in this Case, the Nation should put no favourable Construction on our Proceedings; for which Reason I thought it prudent to withdraw. And the rather; because I am fully perswaded, that it is contrary to the meaning and intention of the Act, for us to continue to sit and act now, when the Nation is in perfect Peace and Tranquillity, Her Majesty peaceably seated on the Throne, her Right and Title disputed by none, and her Government Universally acceptable to the People.

Besides, I was unwilling to be any ways Instrumental in continuing a Parliament, which is under such Restrictions and Limitations, that it has no Power to redress any Grievance of the Subject, or to repeal any Law that is burdensome to them. This one Consideration was sufficient to convince me, that it is the universal desire of the whole Nation, to have a New Parliament, which may be able to give them what good Laws they stand in need of at present, and to repeal those that are inconvenient. How is it possible to imagine, that it can be the desire of a Nation, to have a Parliament continued, which is so Limited in its Powers, that it is not able to ease the Nation of any Burden, or to redress any of its Grievances. I was told indeed by some, that this inconvenience might be easily remedied, if the present Parliament should make an Act, to take off the restrictions and Limitations they are under, and to impower themselves to make Laws, to repeal Laws, and to continue themselves a Parliament, even after the Six Months, from the Death of the King are expired.

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But, I confess, I was surprised to hear that such things should come from the mouths of any persons, who are intrusted by the People, with the Preservation of their Rights and Liberties. I was ashamed to hear that such reasoning should proceed from any one, that is intrusted with a part of the Legislative Authority of a Nation.

The Collective Body of the Nation, by their Representatives in Parliament, have given us a Power to meet after the King's Death, and to act in such cases, and under such restrictions and limitations, as are there specified in the Act, by which this Power is conveyed to us. Now for us, when we are cloathed only with this delegated Power, to think, that we may take those Restrictions and Limitations, from off our Selves, and extend our Powers, by our own Authority, further than our Constituents ever designed or intended, is such an absurdity, so repugnant to the Principles of common Justice, that it could never enter into the mind of any man, unless he were of Opinion with Mr. *Hobbes*, *That the strongest force gives the best Title to Government*, and that whoever gets into the Possession of any Authority, ought still to keep it, and enlarge it by what means he can. If this were allowed, what Security can the Subjects have under any Limited Monarchy, if the King, who is in possession of the whole Executive Power of the Nation, should take upon him, to declare himself an Absolute Independent Sovereign, and to throw off those Restrictions and Limitations he lies under, by the Constitution and Fundamental Laws of the Kingdom.

In matters of Justice and Equity, it is the same between different Bodies of Men, or a Body of Men and a particular Person, as it is between Man and Man. If I should appoint any one to be my Heir, or leave him

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a Legacy, or make any Contract whatever with another Person, upon such Conditions, and under such Limitations as I shall think fit; will any one say, that it is in the Power of the Heir, of the Legatary, or of the Person with whom I have contracted, to alter those conditions, or free himself of those Limitations he is under, without my consent? The present Case is just the same; The People of this Kingdom has entrusted us with certain Powers, under certain Restrictions and Limitations. We cannot therefore possibly enlarge our own Powers, or free our selves from the Limitations we are under, without the consent of the People. We are authorized by the Nation, to meet at the King's Death, and if the State of the Nation require it, to Act in such cases as shall be absolutely necessary for the present security of the Kingdom, and which cannot possibly be delaid till a New Parliament can be assembled. The Nation having been in perfect peace and tranquillity upon the Death of the King, and her present Majesty in the peaceable possession of the Throne, the Cases, in which we are allowed to act, have not existed, and therefore the further Continuance of the Parliament seems directly contrary to the design and intent of the Act. In this matter, we have the Opinion of the Lawyers of the Nation on our side, who, at a publick meeting of their Faculty, declared, that it was their Opinion, that our Proceedings on this occasion are warranted by Law, and that the Continuance of this Assembly, is directly contrary to the design and meaning of the Act of Parliament. This they have signified to us, and have Impowered the Dean of their Faculty, to sign, in their Names, the Adress which we have sent to Her Majesty. When all these things are laid before the Queen, we need not doubt of her Majesties ready compliance, with what we have made bold to

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desire in the name of the Nation, that she would be pleased speedily to call a New Parliament, it being so just and reasonable in its self, after so long continuance of this, so absolutely necessary for the present ease of her Majesties Subjects, and so universally desired of all her People. We are all fully satisfied of her Majesties good Intentions to this Kingdom; we know that she has an universal Love, and an equal Concern for all her Subjects, and that her Majesties chief Care is, to make us all happy and easie under her Government. I am

Gentlemen

June the 15*th*. 1702.

Your &c.